

EXHIBIT A

Keith Jones

From: John D. Simmons
Sent: Thursday, May 13, 2021 4:42 PM
To: Anania, Mark H.; Moustakas, George; Samuels, Joel
Cc: Scrivani, Stacey A.; Keith Jones; Lisa (Toth) Simpson (lsimpson@orrick.com); Lopez, Stephanie; 'Poff, Adam'; Vrana, Robert
Subject: Re: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric
Attachments: Coface Collections North Am._ Inc. v. Newton_ 2012 U.S[1].PDF; SCHEDULE A to Subpoena to Emerson Electric Co.(1878322.1).pdf; Subpoena to Emerson Emerson Electric Co(1878328.1)[1].pdf

Mark:

Thank you for confirming that Emerson Radio's witness is within the subpoena power of the DE court for the Emerson Electric case.

Based on the attached case from Judge Stark, we are requesting that you reconsider your position regarding whether we can issue a subpoena from the Radio case to Emerson Electric for a *de bene esse* type deposition.

We are taking Emerson Electric's 30(b)(6) deposition on May 27th. We plan to ask that witness questions based on the topics set forth in the attached subpoena, which we have not served based on your opposition, regardless of whether you reconsider or not. If we have to go to the court, it would be burdensome on Emerson Electric's witness to have to appear a second time at a later date. We do not see how it would be a burden on you to attend the relevant portion of the Emerson Electric deposition which will be conducted by Zoom.

George and Joel:

Assuming that Mark does not reconsider, would you object to Mark and/or Stacey attending the relevant portion of your 30(b)(6) deposition? We can pick a time like right after the lunch break (say 1:30 PM EDT) so that Mark and/or Stacey could be scheduled.

In the event the Court grants our leave, we can revisit just using the relevant portion of your 30(b)(6) deposition without having to reconvene for a second deposition two months from now.

We are trying to reduce the burden on the witness.

Let us know if you all want to discuss by phone.

Best regards,
John

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John D. Simmons
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jsimmons@panitchlaw.com

From: "Anania, Mark H." <Mark.Anania@stevenslee.com>
Date: Wednesday, May 12, 2021 at 9:46 AM
To: John Simmons <JSimmons@panitchlaw.com>
Cc: "Scrivani, Stacey A." <SASC@stevenslee.com>, Keith Jones <KJones@panitchlaw.com>, "Lisa (Toth) Simpson (lsimpson@orrick.com)" <lsimpson@orrick.com>, "Lopez, Stephanie" <Stephanie.Lopez@stevenslee.com>
Subject: RE: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

External Email: This email is from outside of the company - Please use caution when opening links and attachments.

Hi John:

This follows up on the results of our meet and confer earlier this morning.

As to the subpoena to Emerson Radio, based on our understanding that Emerson Radio is now within 100 miles of the District of Delaware's Wilmington courthouse, an Emerson Radio representative is subject to a subpoena to appear at trial and give testimony in Civil Action No. 1:17-cv-01846-LPS-JLH. As a result, we agreed that the subpoena to Emerson Radio for which we accepted service on May 6, 2021 is moot and therefore withdrawn.

As to the proposed subpoena to Emerson Electric, Defendants will need to seek leave to serve it and we intend to oppose. We understand that Defendants will prepare the first draft of the submission to the Court to raise the issue and provide a copy for our review and comment prior to filing. We will look for that when ready.

Mark

Mark H. Anania

STEVENS & LEE P.C.

Office: 201.857.6769 | Mobile: 732.673.8924

mark.anania@stevenslee.com | [biography](#)

From: Anania, Mark H.

Sent: Tuesday, May 11, 2021 6:57 PM

To: 'John D. Simmons' <JSimmons@panitchlaw.com>

Cc: Scrivani, Stacey A. <SASC@stevenslee.com>; Keith Jones <KJones@panitchlaw.com>; Lisa (Toth) Simpson (<lsimpson@orrick.com>) <lsimpson@orrick.com>

Subject: RE: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Will do – talk then. Thanks John.

Mark

Mark H. Anania

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mark.anania@stevenslee.com | [biography](#)

From: John D. Simmons <JSimmons@panitchlaw.com>

Sent: Tuesday, May 11, 2021 11:00 AM

To: Anania, Mark H. <Mark.Anania@stevenslee.com>

Cc: Scrivani, Stacey A. <SASC@stevenslee.com>; Keith Jones <KJones@panitchlaw.com>

Subject: Re: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Good morning, Mark:

I can do 9:00 AM tomorrow. Just call me directly.

Best regards,
John

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and calls as quickly as possible. Please contact us before sending anything in the mail or by hand delivery, as our offices are closed until further notice per government orders. We remain committed to you during this unprecedented time. Please reach out to us if you have any questions or concerns and thank you for your understanding.

John D. Simmons

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jsimmons@panitchlaw.com

From: "Anania, Mark H." <Mark.Anania@stevenslee.com>

Date: Tuesday, May 11, 2021 at 10:45 AM

To: John Simmons <JSimmons@panitchlaw.com>

Cc: "Scrivani, Stacey A." <SASC@stevenslee.com>, Keith Jones <KJones@panitchlaw.com>

Subject: RE: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

External Email: This email is from outside of the company - Please use caution when opening links and attachments.

Hi John:

Are you available for a further meet and confer on both the pending subpoena issues tomorrow morning at 9:00?

Mark

Mark H. Anania

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Office: 201.857.6769 | Mobile: 732.673.8924

mark.anania@stevenslee.com | [biography](#)

From: John D. Simmons <JSimmons@panitchlaw.com>

Sent: Monday, May 10, 2021 4:10 PM

To: Anania, Mark H. <Mark.Anania@stevenslee.com>

Cc: Scrivani, Stacey A. <SASC@stevenslee.com>; Keith Jones <KJones@panitchlaw.com>

Subject: Re: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Mark:

Let me know your availability for a meet-and-confer on the below request. We want to be able to take this deposition the same day we are taking Electric's 30(b)(6) deposition which will hopefully be the first week of June.

Best regards,
John

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From: John Simmons <JSimmons@panitchlaw.com>

Date: Wednesday, May 5, 2021 at 12:11 PM

To: "Anania, Mark H." <Mark.Anania@stevenslee.com>

Cc: "Scrivani, Stacey A." <SASC@stevenslee.com>, Keith Jones <KJones@panitchlaw.com>

Subject: Re: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Mark:

Just following-up on the below issue. Will Emerson Radio agree to allow Defendants issue a subpoena for Emerson Electric testimony to be used at trial in the Emerson Radio case?

Or, do we need to seek the assistance of the court?

Best regards,
John

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From: John Simmons <JSimmons@panitchlaw.com>

Date: Thursday, April 29, 2021 at 11:51 AM

To: "Anania, Mark H." <Mark.Anania@stevenslee.com>

Cc: "Scrivani, Stacey A." <SASC@stevenslee.com>, Keith Jones <KJones@panitchlaw.com>

Subject: Re: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Mark:

I actually meant to discuss the subpoena to EE from your case. We had previously subpoenaed EE in 2019, but EE resisted based on the CIA we were not made aware of by ER until after discovery was over.

We realize fact discovery was closed. However, since the Court recognized that each of you is potentially going to claim to be just EMERSON, we are requesting to have a *de benne esse* deposition of an EE corporate representative to present at trial in your case.

I'm pretty sure the Court would grant such a request considering the aforementioned issue raised during the Motion to Consolidate hearing. So, we are asking you to work with us.

We can also discuss the subpoena we will be issuing from the EE case for an ER corporate representative.

How is 10:30 AM on Friday?

Best regards,
John

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From: "Anania, Mark H." <Mark.Anania@stevenslee.com>
Date: Wednesday, April 28, 2021 at 5:36 PM
To: John Simmons <JSimmons@panitchlaw.com>
Cc: "Scrivani, Stacey A." <SASC@stevenslee.com>, Keith Jones <KJones@panitchlaw.com>
Subject: RE: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Hi John:

Assuming you mean the subpoena to Emerson Radio from the Electric case? I am generally free on Friday. Does anytime then work for you?

Mark

Mark H. Anania
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From: John D. Simmons <JSimmons@panitchlaw.com>
Sent: Wednesday, April 28, 2021 1:59 PM
To: Anania, Mark H. <Mark.Anania@stevenslee.com>
Cc: Scrivani, Stacey A. <SASC@stevenslee.com>; Keith Jones <KJones@panitchlaw.com>
Subject: Emerson Radio v. Emerson Quiet Kool - meet-and-confer to discuss subpoena to Emerson Electric

Mark:

Let us know your availability to discuss the subpoena to Emerson Electric.

Best regards,
John

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

EMERSON ELECTRIC CO.,

Plaintiff,

v

EMERSON QUIET KOOL CO. LTD.,
and HOME EASY LTD.,

Defendants.

: CIVIL ACTION NO.

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:

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:

17-1846-LPS-JLH

Wilmington, Delaware
Tuesday, April 13, 2021
Telephonic Oral Argument

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES:

YOUNG CONAWAY STARGATT & TAYLOR, LLP
BY: ADAM W. POFF, ESQ.

and

HARNESS, DICKEY & PIERCE PLC
BY: GEORGE D. MOUSTAKAS, ESQ.
(Troy, Michigan)

and

HARNESS, DICKEY & PIERCE PLC
BY: JOEL R. SAMUELS, ESQ.
(Clayton, Missouri)

Counsel for Plaintiff

Brian P. Gaffigan
Official Court Reporter

1 APPEARANCES: (Continued)

2
3 PANITCH SCHWARZE BELISARIO & NADEL, LLP
4 BY: JOHN D. SIMMONS, ESQ.

5 and

6 PANITCH SCHWARZE BELISARIO & NADEL, LLP
7 BY: KEITH A. JONES, ESQ.
8 (Philadelphia, Pennsylvania)

9 Counsel for Defendants

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23 P R O C E E D I N G S

24 (REPORTER'S NOTE: The following telephonic oral
25 argument argument was held remotely, beginning at 12:01 p.m.)

1 In sum, in my view, Judge Hall's Order
2 reasonably and properly balances considerations of
3 efficiency, expense, and fairness, making it an appropriate
4 basis to deny the consolidation motion under Rule 42.

5 Part of what I said is a quote there from
6 the *Resident vs. Works* decision of this court in 2011,
7 774 F.Supp., back in at 264.

8 I want to conclude with just a couple final
9 points.

10 As I explored with the parties, I do have a
11 concern. I hear the defendants on this point that the
12 separate trials, if they happen in a particular way, if
13 we're not careful, could be truly unfair in an improper way
14 to the defendant. And that would be if the jury, the two
15 different juries are given an inaccurate view of what each
16 plaintiffs' intellectual property rights in the mark are.

17 I will need the parties' assistance as this case
18 goes forward, and I will let the Emerson Radio parties know
19 this as well, I don't intend to allow either plaintiff to
20 gain an unfair or improper advantage as a result of having
21 separate trials. There may well be evidentiary disputes
22 ahead that I will be faced with to ensure this, but I am
23 not going to allow any plaintiff to unfairly or improperly
24 prejudice the defendants by presenting an unfair picture of
25 what the landscape here is with respect to use and rights in

1 the word "Emerson."

2 I don't hear the plaintiffs today to be saying
3 they have any intent or belief that they could do this. A
4 lot of the *Lapp* Factors -- maybe not a lot, but at least
5 some of the *Lapp* Factors, it would seem to me, would
6 implicate the questions of how a mark is used, and what the
7 market looks like, and all of that would seem to implicate,
8 for instance, in this case, evidence regarding Emerson Radio
9 and how it uses the mark and whether the channels it is
10 marketing and advertising and the products that Emerson
11 Radio failed to market, how that all relates here. We'll
12 see.

13 The point is it's a concern, it will remain a
14 concern. The parties will have to initially see if they can
15 work together on how to deal with those concerns. And if
16 they don't, then I recognize I may be signing up for some
17 disputes, but none of it persuades me that Judge Hall
18 somehow erred in not consolidated these cases.

19 And a final related point.

20 I'm denying consolidation, but I suspect it
21 may turn out to be that some, perhaps a great amount, of
22 pretrial coordination may still be appropriate. I will be
23 entering an order seeking the proposal of the schedule in
24 the Emerson Radio case and in requiring those parties to
25 meet and confer not only with themselves but with the